

PUBLIC ADMONISHMENT OF JUDGE JOAN COMPARET-CASSANI

The Commission on Judicial Performance has ordered Judge Joan Comparet-Cassani publicly admonished pursuant to article VI, section 18(d) of the California Constitution and commission rule 115, as set forth in the following statement of facts and reasons found by the commission:

STATEMENT OF FACTS AND REASONS

Judge Comparet-Cassani became a judge of the Los Angeles County Municipal Court in 1995. In 2000, she became a judge of the Los Angeles County Superior Court. The judge's current term began in January 2011.

The judge presided over the matter of *People v. Evan Perkins*, No. NA083318, which involved felony charges of theft and drug possession. Perkins was initially represented in this matter by appointed counsel.

On January 22, 2010, the judge granted Perkins's motion to proceed in pro per and relieved his court-appointed attorney.

On April 13, 2010, Perkins appeared before the judge for a pretrial hearing and submitted two motions, a *Pitchess* motion and a *Brady* motion.¹ Upon receiving the *Pitchess* motion, the judge stated that she did not believe that Perkins had prepared the motion himself. Perkins responded that he had prepared the motion himself and that he had someone else type it. The judge proceeded to question Perkins about the motion and repeatedly stated that she did not believe he had prepared it despite Perkins's insistence that he had. The judge ultimately concluded that Perkins was lying to the court about not having received legal assistance in connection with the preparation of the motion and on that basis she revoked his pro per status and appointed a bar panel attorney to represent him. The following colloquy occurred during the hearing:

THE CLERK: Here's the *Pitchess*. There's (*sic*) the other motions he filed this morning.

THE COURT: Did you give [Deputy District Attorney] Recana copies?

THE DEFENDANT: Yes, Your Honor.

MR. RECANA: I just received it right now in my hand.

¹ In a *Pitchess* motion, a defendant whose defense entails proving violent or other improper conduct by a law enforcement officer seeks discovery of complaints by other people against the officer in order to attempt to show a pattern of improper behavior. (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531.) In a *Brady* motion, a defendant seeks disclosure by the prosecution of information that is exculpatory and material. (*Brady v. Maryland* (1963) 373 U.S. 83.)

THE COURT: Okay. Who did you get this form from?

THE DEFENDANT: I did it myself, Your Honor.

THE COURT: I don't believe that.

THE DEFENDANT: Well, I had somebody -- I wrote it and I had somebody type it for me.

THE COURT: But it -- parts are added in, so it's a proforma form.

THE DEFENDANT: Excuse me?

THE COURT: I said, parts are added, so it looks proforma to me. You got this from somebody.

THE DEFENDANT: I wrote it in handwriting, and I had somebody type it up for me.

THE COURT: No, I don't believe you.

THE DEFENDANT: I did, Your Honor. That's the truth.

THE COURT: But you copied it from something.

THE BAILIFF: Ma'am, if you continue to react, you'll be in the hallway.

THE DEFENDANT: I have a piece of discovery right here that --

THE COURT: Excuse me. I'm reading this. You gave it to me.

(A Pause in the Proceedings.)

THE COURT: You did not draft this. There's no way.

THE DEFENDANT: I did, Your Honor. That's the honest truth.

THE COURT: No, there's no way.

THE DEFENDANT: I did, Your Honor.

THE COURT: I don't believe you; it's that simple. I don't believe you. You did not draft this. [¶] What is *People v. Memro* about?

THE DEFENDANT: I don't know, Your Honor.

THE COURT: Well, you cite it.

THE DEFENDANT: Well, I got it off the computer in the law library, Your Honor.

THE COURT: You cite it for a proposition. What does it stand for?

THE DEFENDANT: I don't know off the top --

THE COURT: You don't know. [¶] And what does *People v. Harris* stand for?

THE DEFENDANT: *People v.* who?

THE COURT: *v. Harris*. You cite it.

THE DEFENDANT: *People* versus *Harris*?

THE COURT: Yeah.

THE DEFENDANT: I haven't researched it, Your Honor.

THE COURT: You cite it.

THE DEFENDANT: It's the correct authority, Your Honor.

THE COURT: What?

THE DEFENDANT: It's the correct authority, Your Honor.

THE COURT: For what?

THE DEFENDANT: For my *Pitchess*.

THE COURT: For what proposition? For what rule of law?

THE DEFENDANT: I don't know, Your Honor.

THE COURT: Uh-huh. What about *People v. Wheeler*; what does that stand for?

THE DEFENDANT: Moral turpitude.

THE COURT: With respect to what?

THE DEFENDANT: To peace officers.

THE COURT: With respect to what?

THE DEFENDANT: Their conduct, Your Honor.

THE COURT: No, you're wrong. That isn't what you cite it for either.

THE DEFENDANT: Well, Your Honor, I'm not --

THE COURT: You cite *Wheeler*; tell me what it stands for. [¶] No, I'm asking you. Don't read it to me. Tell me what it stands for. You wrote this, you claim. Tell me what it stands for.

THE DEFENDANT: I did, Your Honor, I drafted it. I got it off the computer.

THE COURT: Get your hand away from your mouth.

THE DEFENDANT: I got it off the computer, Your Honor.

THE COURT: You got it off the computer from where?

THE DEFENDANT: From the law library.

THE COURT: You didn't write this. [¶] What are you giving me these subpoenas for? I don't have anything to do with your subpoenas. [¶] Give it back to him. [¶] You didn't write that. You're lying to the court.

THE DEFENDANT: I drafted it up, Your Honor.

THE COURT: You drafted it up copying something or somebody giving it to you. You did not write that. [¶] You're getting legal assistance, and that's improper if you're pro per.

THE DEFENDANT: I'm not allowed to have legal assistance, Your Honor?

THE COURT: No.

THE DEFENDANT: Why is that?

THE COURT: Because you're pro per.

THE DEFENDANT: I know that, Your Honor, but the D.A.'s (*sic*) get legal assistance all the time. They have --

THE COURT: Don't argue with me. You cannot have an attorney helping you.

THE DEFENDANT: I'm not having an attorney help me, Your Honor.

THE COURT: Well, you did not write that.

THE DEFENDANT: I put it together from, you know, stuff from the law library, Your Honor.

THE COURT: Absolutely not. Absolutely not. [¶] It says at the bottom, notice of motion for pretrial. That is somebody's proforma *Pitchess* motion, and you're getting legal assistance.

THE DEFENDANT: I wrote it on paper and had somebody type it for me, Your Honor.

THE COURT: Nope. You're lying to the court. [¶] I'm revoking your pro per status.

THE DEFENDANT: Objection, Your Honor.

THE COURT: I don't care. We're gonna (*sic*) have counsel. [¶] Who represented him before, Luis?

THE CLERK: Let me check, Judge.

MR. RECANA: Mr. Perry, I believe, Your Honor. Robin Perry.

THE CLERK: Robin Perry. I can contact his office. I can have the bar panel stand in for Mr. Perry today, if you'd like.

THE DEFENDANT: Your Honor, there's a conflict of interest with me and Robin Perry, Your Honor.

THE COURT: Let me see first from the beginning, was he ever represented by the P.D.'s office?

THE DEFENDANT: There's a conflict.

MR. RECANA: No. Even from as early as September, a conflict was declared, and Robin Perry was the counsel.

THE COURT: By whom, the P.D.?

MR. RECANA: I'm sorry?

THE COURT: A conflict by whom, the P.D.?

MR. RECANA: It was originally, since this was a three defendant case, it was the P.D. for Ms. Mobley, and then the A.P.D. for Ms. Duran.

THE COURT: All right. We need ICDA.

THE CLERK: Yes. I'm calling Department J.

THE DEFENDANT: Your Honor.

THE COURT: And I'm revoking his pro per status because he's lying to the court.

THE DEFENDANT: Your Honor.

THE COURT: And he's obstructing justice by using the assistance of counsel when he's not allowed to.

THE CLERK: Mr. Frisco is the duty person today.

THE COURT: All right. We'll put this over until we can get him down.

(R.T. 2:10 – 7:26.)

On May 12, 2010, Perkins filed a petition for writ of mandate with the Court of Appeal seeking to have the judge's April 13, 2010 order vacated and his pro per status restored.

On May 25, 2010, the district attorney's office filed a preliminary response to the petition wherein it was conceded that the judge had wrongly revoked Perkins's pro per status.

On May 27, 2010, the Court of Appeal issued a notice of intention to grant the writ and temporary stay order. The notice stated that the appellate court was considering granting the writ in the first instance "on the ground that it was a clear abuse of the superior court's discretion to revoke petitioner's pro per status on the basis of the court's speculation that he was 'lying' about the independent preparation of a pretrial motion."

Thereafter, at a pretrial hearing on June 2, 2010, Judge Comparet-Cassani ordered Perkins's pro per status reinstated. The writ petition was subsequently dismissed as moot.

A criminal defendant has the right under the Sixth Amendment to the U.S. Constitution to represent himself or herself. (*Faretta v. California* (1975) 422 U.S. 806, 835.) However, the right to self-representation is not absolute and may be terminated by a trial judge when a defendant deliberately engages in serious and obstructionist misconduct. (*Id.* at p. 834, fn. 46.) In short, a trial court retains jurisdiction to determine whether a defendant has become so disruptive, obstreperous, disobedient, disrespectful or obstructionist in his or her conduct as to preclude the exercise of the right to self-representation. (*People v. Welch* (1999) 20 Cal.4th 701, 735.)

In her response to the commission's preliminary investigation letter, Judge Comparet-Cassani admitted that she violated Perkins's Sixth Amendment right to self-representation. She also admitted that the fact that a pro per defendant did not prepare motions submitted to the court "is not a ground for a status change." The judge asserted that her actions were motivated out of concern that Perkins was filing motions solely to delay the proceeding.

The commission noted the absence in the record to any reference that Perkins was trying to delay or obstruct the proceeding. In the commission's view, the record establishes that the judge's decision to revoke Perkins's pro per status was based on two factors: (1) her belief that Perkins had received legal assistance in connection with the *Pitchess* motion; and (2) her belief that Perkins was lying about whether he had received legal assistance. Neither of these factors, if true, provided a legal basis for the judge's decision. The commission found that the judge's conduct constituted abuse of authority, disregard for Perkins's Sixth Amendment rights, and intentional disregard of the law. (See *Inquiry Concerning O'Flaherty* (2004) 49 Cal.4th CJP Supp 1, 20-21 [serious lack of awareness or concern that consequences of judge's conduct runs afoul of law constitutes intentional disregard of law].) The judge's conduct violated canon 2A (judge shall respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary) and canon 3B(2) (judge shall maintain professional competence in the law).

The commission further found that the judge's demeanor toward Perkins during the hearing was improper. The judge spoke to Perkins in a harsh manner, repeatedly stated that she did not believe him, grilled him on cases cited in his motion, and stated three times that he was lying to the court. In contrast, the record reflects that Perkins remained respectful toward the judge throughout the hearing. The judge's conduct violated canon 2A and canon 3B(4) (judge shall be patient, dignified, and courteous to those persons with whom the judge deals in an official capacity).

The commission concluded that Judge Comparet-Cassani's conduct as described above constituted, at a minimum, improper action.

In reaching its decision, the commission viewed as aggravating factors two prior matters in which Judge Comparet-Cassani was disciplined for misconduct similar to that at issue here, namely, abuse of authority with regard to a pro per criminal defendant and poor demeanor. In 2000, the judge was privately admonished, in part, for ordering a sheriff's deputy to activate an electronic stun belt being worn by a pro per criminal defendant that was designed to deliver a 50,000 volt electric shock for approximately eight seconds. The judge ordered the belt activated during a hearing not to prevent courtroom violence, but because of the defendant's verbal interruptions. The admonishment also included two prior incidents, one involving the defendant who was shocked and one involving another defendant, in which the judge threatened the use of the belt as a means of controlling non-violent courtroom behavior. In 2006, the judge received an advisory letter for making demeaning remarks in open court to a criminal defense attorney in the presence of the attorney's client. The judge questioned the attorney about where and when she went to law school, when she passed the bar, and whether she was "up to" handling the case.

Commission members Hon. Judith D. McConnell, Hon. Frederick P. Horn, Mr. Anthony P. Capozzi, Ms. Nanci E. Nishimura, Ms. Barbara Schraeger Mr. Lawrence Simi, Ms. Maya Dillard Smith, Ms. Sandra Talcott, Mr. Nathaniel Trives, and Hon. Erica R. Yew voted to impose a public admonishment. Commission member Adam N. Torres did not participate.

Dated: August 16, 2011